

STATEMENT OF EMERGENCY
301 KAR 1:152E

FILED WITH LRC TIME: <u>4 pm</u> MAY 24 2019 Emily B Caudill REGULATIONS COMPILER

(1) This emergency administrative regulation establishes the requirements for the harvest and sale of Asian carp beyond the requirements of 301 KAR 1:155.

(2) Asian carp continue to proliferate and negatively impact Kentucky Lake and Lake Barkley in western Kentucky. They consume the base of the aquatic food chain necessary for recruitment of important sportfish, such as bass and crappie. The department's Asian Carp and Scaled Rough Fish Harvest Program was created to help control the population of these invasive, exotic species. The current program prohibits commercial fishermen from fishing on a Saturday or prior to sunset on a Sunday from April 1 through September 30, as well as Memorial Day, Labor Day, and July 4. The original intent was to minimize conflicts with recreational anglers and boaters. However, both of these user groups, as well as the local tourism industry, and KDFWR biologists now realize that there is an escalated need to remove as many Asian carp from Kentucky and Barkley lakes as soon as possible. This emergency regulation needs to be placed into effect immediately in order to put commercial fishermen on the water for as many days as possible to increase the harvest of these invasive fish species.

(3) This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.


Matthew G. Bevin, Governor
Commonwealth of Kentucky


Rich Storm, Commissioner
Department of Fish and Wildlife Resources

1 TOURISM, ARTS AND HERITAGE CABINET

2 Department of Fish and Wildlife Resources

3 (Emergency Amendment)

4 301 KAR 1:152E. Harvest and sale of Asian carp~~[Carp and Scaled Rough Fish Harvest~~
5 ~~Program]~~.

6 RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

7 STATUTORY AUTHORITY: KRS 150.025(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the
9 department to promulgate administrative regulations to establish seasons for the taking
10 of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying,
11 selling, or transporting of fish and wildlife, and to make these requirements apply to a
12 limited area. This administrative regulation establishes the requirements for the harvest
13 and sale of~~[department's]~~ Asian carp beyond the requirements of 301 KAR 1:155~~[Carp~~
14 ~~and Scaled Rough Fish Harvest Program]~~.

15 Section 1. Definitions.

16 (1) "Asian carp" means:

17 (a) Bighead carp;

18 (b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program" means Asian Carp and Scaled Rough Fish Harvest Program.

(4) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp and Scaled Rough Fish Harvest Program; and

(b) Fishing in restricted water.

(5)[(4)] "Restricted water" means those areas, as established in[pursuant to] 301 KAR 1:140, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(6)[(5)] "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish as established in[pursuant to] 301 KAR 1:060.

(7)[(6)] "Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish.

Section 2. Program Participant Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program; and

(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 800-858-1549 prior to the requested fishing date and

1 provide the information established in paragraphs (a) through (e) of this subsection:

2 (a) The participant's name;

3 (b) The fish buyer's name and phone number;

4 (c) Date requested;

5 (d) The location in the restricted water body to be fished; and

6 (e) The name or location of the boat ramp that will be used;

7 (2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five
8 (35) percent scaled rough fish over a one (1) month period, except that a commercial
9 fisherman whose license fee has been waived as established in~~[pursuant to]~~ Section 4 of
10 this administrative regulation shall only harvest Asian carp and not retain any by-catch;

11 (3) Only fish:

12 (a) On dates approved by the department; and

13 (b) At a location approved by the department;

14 (4) Immediately notify the department if the participant changes the:

15 (a) Fishing location in the restricted water body; or

16 (b) Boat ramp being used;

17 (5) Only use a whip net set:

18 (a) With a minimum bar mesh size of three (3) inches;

19 (b) That is always tended by a program participant when set less than three (3) feet
20 below the surface of the water;

(c) That is not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and

(d) That is not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;

(6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;

(7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative regulation;

(8) Immediately release all by-catch;

(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in~~[pursuant to the requirements of]~~ 301 KAR 1:155; and

(10) Be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program

1 participant~~[commercial fisherman]~~ who only harvests Asian carp in restricted waters.

2 Section 5. Department Program Requirements.

3 (1) The department shall:

4 (a) Maintain a list of program participants and their contact information, which shall
5 be:

6 1. Provided to known fish buyers; and

7 2. Updated at least weekly; and

8 (b) Review all restricted water fishing requests as established in Section 3 of this
9 administrative regulation.

10 (2) The department shall approve a qualified fishing request by assigning:

11 (a) A fishing location and boat ramp to a program participant, except that no more
12 than two (2) program participants shall be assigned to the same one-half (1/2) mile
13 section of water; and

14 (b) The time period when fishing may occur, not to exceed a three (3) consecutive day
15 period.

16 (3) The department shall not approve a fishing request for reasons established in
17 paragraphs (a) and (b)~~[through (c)]~~ of this subsection:

18 (a) Higher than normal by-catch is likely to occur at that location and time; or

19 (b) Two (2) program participants have already been approved for the same one-half
20 (1/2) mile section of water at the same time~~;~~or

1 ~~(c) A requested date falls on:~~

2 ~~1. Memorial Day;~~

3 ~~2. Labor Day;~~

4 ~~3. July 4; or~~

5 ~~4. A Saturday or prior to sunset on a Sunday from April 1 through September 30].~~

6 Section 6. Program Disqualification.

7 (1) A program participant whose commercial fishing license becomes revoked or
8 suspended as established in~~[pursuant to]~~ 301 KAR 1:155 shall be disqualified from
9 participating in the Asian Carp and Scaled Rough Fish Harvest Program while that
10 license is revoked or suspended.

11 (2) Any participant who is disqualified from participation in the program may appeal
12 the decision in accordance with KRS Chapter 13B.

13 Section 7. Non-commercial Asian Carp Harvest and Sale. A person harvesting Asian
14 carp using legal fishing methods as established in 301 KAR 1:201 and 1:410:

15 (1) May sell Asian carp; and

16 (2) Shall possess a valid Kentucky sport fishing license.

17 Section 8. Incorporation by Reference.

18 (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by
19 reference.

20 (2) This material may be inspected, copied, or obtained, subject to applicable

- 1 copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1
- 2 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

Approved by the Fish and Wildlife Commission



Rich Storm, Commissioner
Department of Fish and Wildlife Resources



Don Parkinson, Secretary
Tourism, Arts and Heritage Cabinet

Date: 5/22/19

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

301 KAR 1:152E. Harvest and sale of Asian carp.

Contact Person: Mark Cramer

Email Address: mark.cramer@ky.gov

Phone: 502-564-3400

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing. This administrative regulation also provides for the sale of Asian carp harvested with traditional and non-traditional fishing methods.

(b) The necessity of this administrative regulation: The regulation is necessary to provide important mechanisms for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a process for nuisance fish removal from waters of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment increases the amount of time commercial fishermen can fish under the Asian Carp and Scaled Rough Fish Harvest Program by allowing them to fish on all weekends and holidays during the year. Previously, commercial fishermen could not fish on a Saturday or prior to sunset on a Sunday from April 1 through September 30. They also could not fish on Memorial Day, Labor Day or July 4. This amendment also allows for the sale of Asian carp harvested using traditional and non-traditional fishing methods.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove as many Asian carp as possible from waters of the Commonwealth, and is critical for the protection of game and non-game fish species, especially in

Kentucky and Barkley lakes in western Kentucky. Increased removal of these invasive fish species will help protect a 1.2 billion dollar tourism industry centered on recreational boating and fishing in western Kentucky and Tennessee.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 20 commercial fishermen currently fishing under the Asian Carp and Scaled Rough Fish Harvest Program as well as any new commercial fishermen who join the program. This administrative regulation will also affect all recreational anglers who wish to harvest and sell Asian carp. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Program will now be able to fish on all weekends and holidays. Recreational anglers using traditional and non-traditional fishing methods will now be able to sell the Asian carp they harvest.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen or recreational anglers to comply with these amendments other than to purchase the appropriate fishing license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen will be able to harvest and sell more Asian carp which will benefit them financially. Recreational fishermen will also benefit financially from any Asian carp they sell. The increased harvest of Asian carp will also benefit all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be minimal cost to the department to implement this

administrative regulation initially.

(b) On a continuing basis: There will be minimal cost to the Department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established or increased, directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not). No. All commercial and recreational fishermen wishing to fish under these amended regulations are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 301 KAR 1:152E. Harvest and sale of Asian carp.

Contact Person: Mark Cramer

Email address: mark.cramer@ky.gov

Phone number: 502-564-3400

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement Division will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government in subsequent years, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: